

84-624

Office Supreme Court, U.S.
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IN THE
Supreme Court of the United States

HARALABOS MANETAS,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

BELL AND HUDSON, P.C.

By: Edward F. Bell (P-10652)

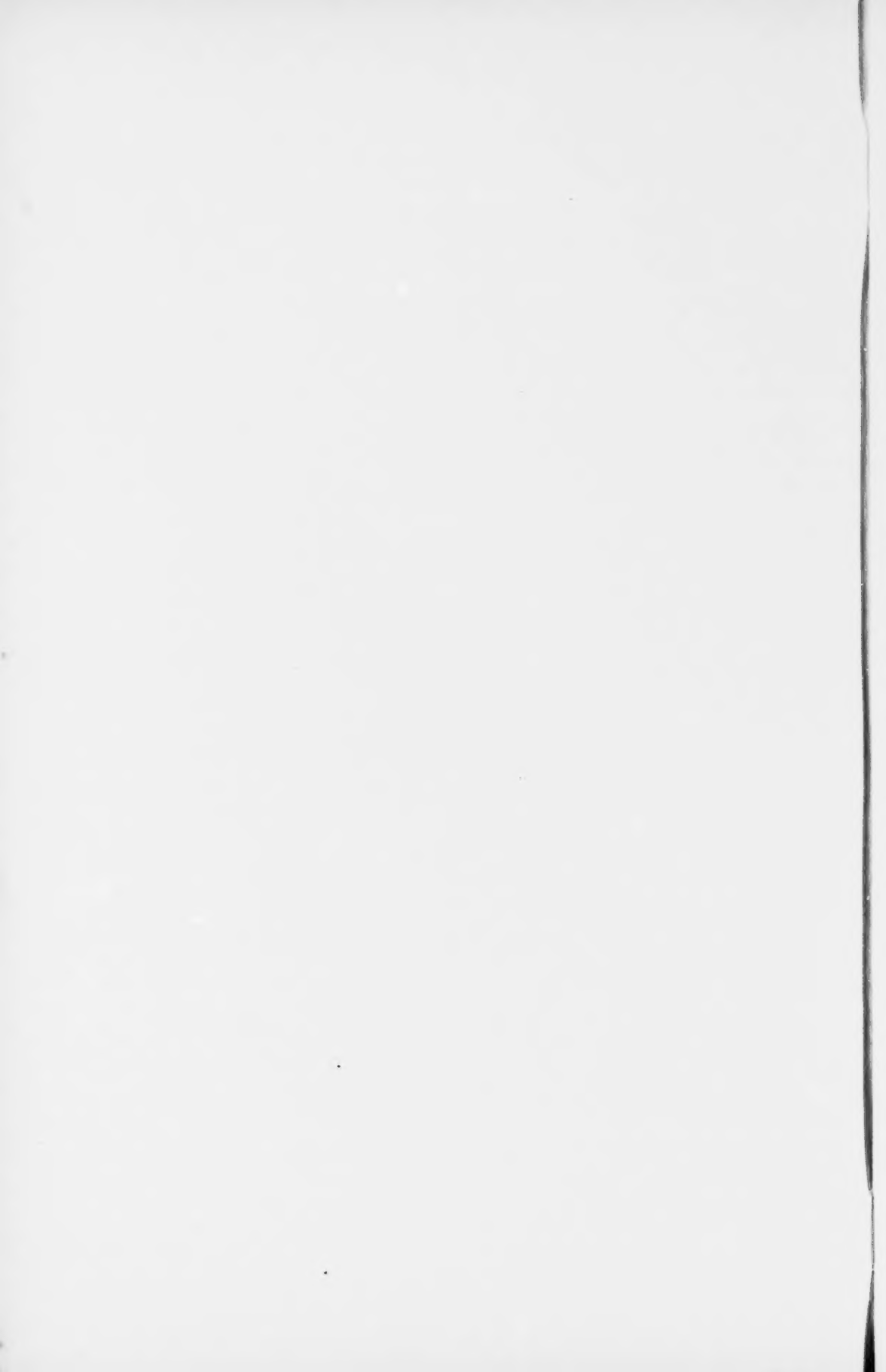
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QUESTION PRESENTED

I.

WHETHER THE TRIAL COURT'S DECISION TO SEVER PETITIONERS MANETAS' TRIAL AS OPPOSED TO SEVERING HIS CO-DEFENDANT'S TRIAL, AFTER JEOPARDY ATTACHED, VIOLATED THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT.

The Petitioner says "Yes."

The Respondent says "No."

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**PETITION FOR WRIT OF CERTIORARI TO THE
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Here comes the Petitioner, HARALABOS MANETAS, by and through his attorneys, BELL & HUDSON, P.C., and respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on August 1, 1984.

OPINION BELOW

United States v Haralabos Manetas, No. 83-1752 (6th Cir. August 1, 1984). Unpublished, appended hereto.

JURISDICTION

On August 1, 1984, the United States Court of Appeals for the Sixth Circuit entered an order affirming the Petitioner's conviction. This petition is being filed timely and seeks to invoke the Court's jurisdiction under 28 U.S.C. §1254(l).

RELEVANT CONSTITUTIONAL PROVISION AMENDMENT (V)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; *nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb*; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. Const. Amend. V.

STATEMENT OF THE CASE

In 1979, Petitioner HARALABOS MANETAS, and his co-defendant James Hatcher, were charged in a multi-count indictment with violating 21 U.S.C. §§841(a)(1), 844, 846 and 18 U.S.C. §2(a).

The defendants were tried jointly and convicted as charged on January 21, 1980. On June 8, 1983 the Court of Appeals for the Sixth Circuit reversed the convictions and remanded for a new trial. *United States v Hatcher*, 680 F.2d 438 (6th Cir. 1982).

Prior to the second trial, four of the six counts charged in the indictment were dismissed. The two remaining counts charged the defendants with conspiracy to possess heroin with intent to distribute and aiding and abetting the distribution of heroin.

Several pre-trial motions were made including a motion for severance by Defendant Hatcher, in which Defendant Manetas joined. The motion was denied on January 4, 1984.

Jury selection began before the Honorable Julian Cook, Jr. on April 27, 1983. After the government had completed its case, Defendant Hatcher requested that he be allowed to present evidence on his cocaine related activities. The trial court denied his request because the evidence would have been prejudicial to Defendant Manetas. Co-defendant Hatcher moved for a mistrial.

The trial court reconsidered Defendant Hatcher's request and ordered that the trials be severed. Instead of severing Defendant Hatcher, who had requested a mistrial, the court severed Defendant Manetas' trial. The Court stated:

THE COURT: Several minutes ago, I had counsel for the Government and the Defendants to meet with me in-chambers.

At that time I expressed to each of them my concern with the rulings that I had just made. I had specific reference to the ruling in which I denied the request of the Defendant Hatcher to produce evidence relating to prior crimes.

I represented to the counsel that I felt uncomfortable with the decision, and more specifically I felt that the ruling as made by the Court as related to Mr. Hatcher could, if carried out, cause a prejudice to him.

Therefore, I advised the counsel that in an effort to avoid any prejudice to the Defendant Hatcher and/or to the Defendant Manetas, that I would vacate the earlier ruling and allow the Defendant Hatcher to present his testimony as relates to prior criminal activities.

Thus, the Court will thereby vacate the earlier determination whereby it was determined that Defendant Hatcher would not be allowed to present evidence of prior cocaine dealings.

This by and of itself, does not eliminate the problem. As the record will reflect Mr. Brown on behalf of his client Haralabos Manetas, argued that the introduction of such evidence would create prejudicial problems to his client.

This Court agrees with that position. We believe that the introduction of the prior criminal activity would have an adverse effect upon the Defendant Manetas. More specifically, we believe that the introduction of that evidence would prejudice Mr. Manetas and violate his constitutional rights.

In an effort to assure that both parties — namely, James Hatcher and Haralabos Manetas — will continue to have a fair trial, this Court believes that in the interest of justice, that a severance of the Defendants should be in order.

Therefore, this court believes and does determine that the case of the United States versus James C. Hatcher and the case of the United States versus Haralabos Manetas shall be severed.

This Court will determine that the case will proceed against Defendant Hatcher, and this Court will set a hearing — rather a trial shortly thereafter, involving the Defendant Manetas.

I will ask Mr. Norman and Mr. Brown if a — to — strike that. Just one moment.

Off the record.

(Off the record.)

THE COURT: Let me ask — this need not be on the record.

(Off the record.)

THE COURT: Let me designate a date of Tuesday, May 31 at 8:30.

All right. Anything further at this point with regard to Mr. Brown?

MR. BROWN: No. Were you going to dictate an order, or has that already taken effect so we can leave now?

THE COURT: No. No I think that is now on the record now. You may leave, Mr. Manetas."

Tr. 5-23-83 at pp. 59-61

Petitioner Manetas' third trial began on May 31, 1983. Prior to commencement of the trial, Petitioner Manetas made a motion to dismiss on double jeopardy grounds. The court denied the motion. Subsequently, Petitioner Manetas was convicted.

An appeal was taken. After hearing oral arguments, the Court of Appeals affirmed Petitioner's conviction on August 1, 1984.

REASONS FOR ALLOWANCE OF THE WRIT

SINCE THE COURT OF APPEALS ANALOGIZED THE GRANTING OF A SEVERANCE AFTER JEOPARDY ATTACHED, TO THAT OF A MISTRIAL, BUT FAILED TO APPLY THE "MANIFEST NECESSITY" STANDARD TO THE DEFENDANT WHICH WAS SEVERED, IT IS IN-COMBENT UPON THIS COURT TO CLARIFY THE APPLICABLE DOUBLE JEOPARDY STANDARD.

The Double Jeopardy Clause of the Fifth Amendment guarantees that no person shall "be twice put in jeopardy of life or limb. . .". This constitutional protection not only prohibits a retrial after an acquittal, but if jeopardy has attached, it may bar retrial after some non-final orders which terminate a trial.

Aborting a trial before it's completed may trigger the constitutional mandates of the Double Jeopardy Clause because of a defendant's "valued right to have his trial completed by a particular tribunal". *Wade v Hunter*, 337 U.S. 684, 689, 69 S.Ct. 834, 93 L.Ed. 974 (1949); *United States v Jorn*, 400 U.S. 470, 484, 91 S.Ct. 547, 27 L.Ed.2d 543 (1970). It is clear from this Court's decisions however, that the mere fact that a defendant faces a second trial does not automatically give rise to a double

jeopardy bar. The circumstances under which the first trial terminated must be examined. See *United States v Dinitz*, 424 U.S. 600, 96 S.Ct. 1075, 47 L.Ed. 267 (1976); *United States v Washington*, 434 U.S. 508, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978); *United States v Scott*, 437 U.S. 82, 98 S.Ct. 2187, 57 L.Ed.2d 65 (1978).

For example, "a motion by the defendant for mistrial is ordinarily assumed to remove any barrier to reprosecution, even if the defendant's motion is necessitated by prosecutorial or judicial error". *United States v Jorn*, 400 U.S. 470, 485 (1970) (Opinion of Harlan, J.). The reason that the Double Jeopardy Clause does not bar reprosecution is that the defendant is deemed to have chosen "to forgo his valued right to have guilt or innocence determined before the first trier of fact". *United States v Scott*, 437 U.S. at 93.

However, when the trial court declares a mistrial, the court must balance the right of the defendant to have his trial completed before the tribunal originally summoned to sit in judgment on him, against the public's interest in affording the prosecutor a fair opportunity to present his evidence without avoidable, appealable errors. *Arizona v Washington*, *supra* at 505; *Wade v Hunter*, *supra* at 688-689.

This Court has consistently held that a judge may *sua sponte* declare a mistrial "whenever, in their opinion, taking all the circumstances into consideration, there is a *manifest necessity* for the act, of the ends of public justice would otherwise be defeated". *United States v Perez*, 9 Wheat. 579 (1824) (emphasis added). In *Arizona v Washington*, 434 U.S. 497, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978), this Court defined "manifest necessity" as requiring a "high degree" of necessity in order to avoid the double jeopardy bar. *Id.* at 506.

In the Case at bar, the Court of Appeals concluded that granting a severance is analogous to a mistrial. *United States v Manetas*, No. 83-1752 (August 1, 1983 6th Cir.) at p. 2. Petitioner agrees with the Court's characterization, but disagrees with the result. The manifest necessity concept should apply

with equal force whether a judge *sua sponte* declares a mistrial or orders a severance.

In the instant case, after the government has presented its case in chief, Defendant Hatcher wanted to present evidence that would have prejudiced Petitioner Manetas. When the court denied his motion, Defendant Hatcher made a motion for a mistrial. The court reconsidered its ruling and ordered that Petitioner Manetas be severed from the case. See Statement of the Case, *supra*.

The state of the record at the time of the severance makes it clear that there was no "manifest necessity" for severing Petitioner Manetas. In pre-trial rulings, the court decided that testimony related to Defendant Hatcher's cocaine activities was not admissible. Tr. 1-4-83 at pp. 51-55. The record was, therefore, carefully shielded from the prohibited testimony. If the trial judge concluded that Defendant Hatcher should be allowed to present his entrapment defense, then he should have severed Defendant Hatcher's trial, especially since Hatcher had motioned for a mistrial. By severing Petitioner Manetas, the trial judge abused his discretion.

In *United States v. Jorn*, 400 U.S. 470, 91 S.Ct. 547, 27 L.Ed.2d 543 (1970), the Court in the plurality opinion, held that manifest necessity did not exist when the judge failed to exercise options that would have prevented a retrial. *Id* at 487. See also *Harris v. Young*, 607 F.2d 1018 (4th Cir. 1979).

In the case at bar, Defendant Hatcher had made a motion for a mistrial. Furthermore, the judge's ruling benefited Hatcher. The trial judge recognized that he erred in not severing the case at the pre-trial stage, so that Defendant Hatcher could present his entrapment defense. Appealable error existed on the record as to Defendant Hatcher. No such error existed as to Petitioner Manetas.

Petitioner Manetas was placed in jeopardy twice, without any justification. The government argues that Petitioner Manetas nonetheless benefited from the severance. Since no prejudicial evidence was presented at the trial, placing a defendant in double jeopardy can hardly be viewed as a benefit.

Reprosecution "increases the financial and emotional burden on the accused, prolongs the period in which he is stigmatized by an

unresolved accusation of wrongdoing, and may even enhance the risk that an innocent defendant may be convicted". *Arizona v Washington, supra* at 503-504.

Therefore, since no manifest necessity existed for terminating Petitioner Manetas' trial, his Fifth Amendment rights were violated, by his reprosecution.

CONCLUSION

For the reason specified in the Petition, Petitioner MANETAS requests that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,
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Dated: September 26, 1984

1a

Order

83-1567

83-1752

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Filed August 1, 1984, John P. Hehman, Clerk

UNITED STATES OF AMERICA
Plaintiff-Appellee

v.

JAMES C. HATCHER (83-1567)
HARALABOS MANETAS (83-1752)
Defendants-Appellants.

ON APPEAL FROM
THE UNITED
STATES DISTRICT
COURT FOR THE
EASTERN
DISTRICT OF
MICHIGAN

BEFORE: LIVELY, Chief Judge; MERRITT, Circuit Judge;
and HORTON, District Judge*

PER CURIAM. Defendants appeal from their separate jury convictions for conspiracy to possess heroin with intent to distribute and aiding and abetting the distribution of heroin. This is the second appeal. The defendants were tried jointly on the same charges and four other charges in 1980 and this court reversed on appeal in *United States v Hatcher*, 680 F.2d 438 (6th Cir. 1982). Following remand four of the charges were dismissed and trial commenced on the two remaining charges in April 1983.

Prior to the second trial both defendants made motions for severance and for an order requiring the government to produce

*The Honorable Odell Horton, Judge, U.S. District Court for the Western District of Tennessee, sitting by designation.

two informants identified by the defendants. The district court denied the motions for severance and granted the motion requiring the government to produce the informants.

During the course of the trial Hatcher convinced the trial judge that testimony which might be prejudicial to Manetas was required in support of Hatcher's entrapment defense. The trial court ruled that Hatcher could produce this evidence, but agreeing that it might be prejudicial to Manetas, severed the prosecution of Manetas and proceeded with the trial of Hatcher. After the conclusion of the Hatcher trial, Manetas was convicted at a separate trial.

On appeal Manetas argues that his right to be free of double jeopardy was violated by the severance and separate trial. The government responds that Manetas had sought a severance and when the trial court granted that severance, Manetas did not protest and made no objection to the procedure followed by the trial court. We agree that under these circumstances Manetas has not raised a valid double jeopardy claim. The evidence which the trial court determined to admitting support of Hatcher's claim of entrapment was the very evidence which Manetas had sought from the beginning to avoid having introduced at a joint trial. Therefore, the trial court was justified in believing that Manetas desired a severance once it had been determined that this evidence was admissible and this assumption was fortified by the failure of Manetas to object to the procedure. We conclude that the situation in this case was analogous to a mistrial followed by retrial and that the Fifth Amendment guarantee against double jeopardy was not violated.

Hatcher maintains that he is entitled to a new trial because the government did not make a reasonable effort to locate and produce the two informants after being ordered to do so by the district court. The district court made a finding that the efforts of the government were reasonable and Hatcher argues that this finding is clearly erroneous.

This court does not condone the rather half-hearted efforts of the government to locate and produce the two informants as disclosed by this record. Nevertheless, the district court was fully informed with

respect to these efforts and was concerned with the government's obedience to its own order at the time it found the efforts were reasonable. In addition, the district court was aware of the limited efforts of the defendants to locate the informants. Our review of the record convinces us, furthermore, that other evidence in the case so weakened Hatcher's entrapment defense that the government's failure to produce the informants whom Hatcher now contends he would have questioned in support of his entrapment defense was not prejudicial. If the district court did err, its error was harmless.

The court has considered the other issues raised by the defendants and finds that none requires reversal. The judgement of the district court is affirmed.